

Cincinnati Mailers' Union No. 1717, affiliated with International Brotherhood of Teamsters, AFL-CIO and S. Rosenthal & Company, Inc. and Graphic Communications International Union, Local 508, OKI, AFL-CIO-CLC. Case 9-CD-478

July 31, 1997

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The charge in this Section 10(k) proceeding was filed November 19, 1996, by S. Rosenthal & Company, Inc., the Employer, alleging that Cincinnati Mailers' Union No. 1717, affiliated with International Brotherhood of Teamsters, AFL-CIO (Mailers), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Graphic Communications International Union, Local 508, OKI, AFL-CIO (Local 508). The hearing was held December 13, 1996, before Hearing Officer Patricia Rossner Fry.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated, and we find, that the Employer, an Ohio corporation, with a place of business in Cincinnati, Ohio, is engaged in the production and sale of various printed materials at its Cincinnati, Ohio location. During the 12 months prior to the hearing, a representative period, the Employer sold goods valued in excess of \$50,000 to customers outside the State of Ohio. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Mailers and Local 508 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

At its facility in Cincinnati, Ohio, the Employer performs printing and other functions to produce and distribute various publications and catalogs across the United States. At its Cincinnati facility the Employer has collective-bargaining agreements with both Mailers and Local 508.¹ The employees represented by Local

508 work in the Employer's bindery department, performing functions associated with the binding of the Employer's printed publications. The employees represented by Mailers work in the mailing department.

In August 1996, the Employer began to print a monthly lottery publication on behalf of the New York Lottery. No formal contract was signed between the Employer and the New York Lottery, but the Employer continues to produce approximately 1 million copies of the publication on a monthly basis.

The lottery publication is bound on the "10-pocket Mueller," which is an automated saddle-stitch binding machine.² After the components, or "signatures," of the lottery publication are printed in the Employer's pressroom by members of another union, Local 508 members bring bundles of the two signatures to the Mueller binder and hand-feed the signatures into the pockets of the Mueller binder. The Mueller binder drops one signature on top of the other signature to form a booklet containing two publications. The Mueller then moves the product down the line to the stapler, which puts two staples in the backbone. The double booklet then continues to the in-line cutting mechanism, which trims the edges of the booklet and then cuts the double booklet in half to form two publications. A finished product then emerges from the Mueller binder. The next step in the operation is the "static-inducer," which sends electrical charges into the stacks of booklets so they will cling together for the strapping process. The next station on the Mueller binder is an in-line stacker, the final operation on that equipment, which stacks the finished booklets into 50-booklet stacks. Like the stitcher and the static-inducer, the stacker is operated by Local 508 employees.

The stacks of booklets emerge from the stacker and continue on a conveyor belt to a different piece of production equipment called the strapper. The strapper is a moveable piece of equipment that is added to the Mueller binder to produce the lottery publication only. The strapper puts plastic straps on each 50-booklet stack to hold the stacks together. Currently, Mailers-represented employees oversee the operation of the strapping machines.

After the strapping is complete, the stacks continue on the conveyor belt to the shrink wrap machine. The shrink wrapper, which is another piece of moveable equipment attached to the Mueller binder only for the lottery publication, uses a heat process to place a plastic shrink wrap on the stack. The shrink wrapper is operated by Mailers-represented employees. The con-

¹ The effective dates of the collective-bargaining agreement between the Employer and Mailers are March 1, 1996, to February 29,

2000. The effective dates of the collective-bargaining agreement between the Employer and Local 508 are April 1, 1995, to March 31, 2001.

² A "saddle-stitch" binder binds publications by placing staples in the fold or backbone of the publication. This binding method is different from that performed by the "perfect binder," which does not use staples.

veyor then moves the stack to another Mailers-represented employee, who applies a fourth class U.S. mailing label to the stack in a semiautomatic process. After applying the mailing labels, the employee takes the shrink-wrapped bundle from the belt and stacks it on a wooden skid or pallet. When the pallet is full, either the mailer or a material handler takes the pallet to the front dock, where it is loaded by material handlers onto U.S. Postal Service trucks for delivery to the bulk mail center.

Initially, the New York Lottery officials specified that the completed booklets were to be shipped by United Parcel Service (UPS) to the sales agents, and in August the Employer shipped the first month's supply of booklets via UPS. Because the product was initially shipped rather than mailed, the Employer assigned the preparation for transport work to employees represented by Local 508. Thus, for the first shipment, Local 508 employees operated the strapper and the shrink wrapper, in addition to the Mueller binder. In September, the New York Lottery officials decided to change the method of delivery from UPS to fourth class U.S. mail. At that point, the Employer reassigned the preparation for transport work (i.e., the operation of the strapper and the shrink wrapper) to the employees represented by Mailers, because the product was to be "mailed" via fourth class mail rather than "shipped." The Employer claims it relied on the jurisdictional language in the parties' respective collective-bargaining agreements in making the reassignment.

On September 13, 1996, Mailers grieved the initial assignment of the operation of the strapper and the shrink wrapper to employees represented by Local 508. By letter dated September 17, 1996, the Employer explained to Mailers its reasons for assigning the work to Local 508, stating that "the method of shipment is the appropriate determining factor." The Employer in this letter also stated that if the delivery method for the lottery publications was changed to fourth class U.S. mail in late September, as expected, the work would be reassigned to employees represented by Mailers. A copy of this letter was sent to Local 508.

When the New York Lottery officials instructed the Employer to change the method of delivery to fourth class U.S. mail later in September, the Employer reassigned the work of shrink-wrapping and strapping to employees represented by Mailers. In a letter to the Employer dated October 25, 1996, Local 508 claimed jurisdiction over the work regardless of the delivery method. On November 11, 1996, Local 508 filed a grievance under its collective-bargaining agreement, protesting the Employer's assignment of the disputed work to Mailers-represented employees. By letter dated November 12, 1996, Mailers notified the Employer that if the work in dispute was taken from employees it represented and reassigned to employees represented

by Local 508, Mailers would strike to enforce its claim to the work. On receipt of this letter from Mailers, the Employer filed a Section 8(b)(4)(D) charge against Mailers with the Board.

B. *Work in Dispute*

The disputed work consists of work beyond the Saddle Binder at the Employer's Cincinnati, Ohio bindery plant, involving shrink wrapping and strapping of publications for the New York Lottery which are mailed to the customer.

C. *Contentions of the Parties*

The Employer contends that the disputed work should be awarded to employees represented by Mailers based on its collective-bargaining agreements with the Unions, its preference and assignment of the work, the skills of the employees, and efficiency of operations. Mailers agrees with the Employer's position.

Local 508 contends that the disputed work should be awarded to employees represented by Local 508 based on the parties' collective-bargaining agreements and the Employer's past practice.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

It is undisputed that in response to information that Local 508 had filed a grievance protesting the assignment of the work in dispute to employees represented by Mailers, Mailers notified the Employer by letter dated November 12, 1996, that if the work in dispute was assigned to employees represented by Local 508, Mailers would strike to enforce its claim to the work. Thus, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. The parties stipulated that there exists no agreed-on method for voluntary adjustment of the dispute which would be binding on all the parties within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

There is no evidence that either Union has been certified by the Board as the collective-bargaining representative of a unit of the Employer's employees. The Employer has collective-bargaining agreements with both Mailers and Local 508, and each Union claims that its contract covers the work in dispute.

The work jurisdiction of Mailers is set forth in section 3(a) of its collective-bargaining agreement with the Employer. Section 3(a) states in relevant part:

All work pertaining to mailing and/or dispatching, such as addressing, stamping, labeling, bundling or wrapping, preparing lists or wrappers, . . . handling of bundles or mail sacks; tying, sacking, inserting or dispatching of papers, envelopes or magazines, whether done by hand or power machine . . . any work beyond the trimmers on the Perfect Binder that involves publications or commercial work that is tied or shrink-wrapped and is mailed or distributed to newsstands is part of the mailing craft and will be under the jurisdiction of the Mailers.

The work jurisdiction of Local 508 is set forth at article 6.1 of its current collective-bargaining agreement with the Employer. Article 6.1 provides:

All shipping work now being performed by bindery helpers and all bindery work and equipment in operation on the date of this agreement, including but not limited to such work (by hand or machine) as folding, cutting, gathering, stitching, trimming, perforating, punching, round cornering, scoring, hand work, gluing, inserting, collating, padding, stuffing, tying and wrapping shall be under the jurisdiction of the Union. Only members of the bargaining unit shall perform work under the jurisdiction of the Union.

Article 25.1 of the current agreement between the Employer and Local 508 further provides:

Any new equipment or improvements installed or attached to existing equipment in the bindery shall be subject to the Union's jurisdiction.

The testimony presented by the Employer at the hearing established that the Employer interpreted these provisions to give jurisdiction to Local 508 for work involving preparation of the finished product for *shipping*, i.e., transport to the customer by common or private carrier, and jurisdiction to Mailers for work involving preparation of the finished product for *mailing*, such as here. We find that the Employer's interpretation of these provisions in making work assignments is

consistent with the language in the respective collective-bargaining agreements.

Further, we reject Local 508's argument that its contract language at article 25.1, which provides, in part, that if "new equipment or improvements [are] . . . attached to existing equipment in the bindery" that the work shall be within Local 508's jurisdiction, requires an award of the work in dispute to employees represented by it because the strapper and shrink wrap devices were attached to the existing 10-pocket Mueller saddle-stitch binder. In this regard, Local 508 argues that the saddle-stitch binder was operated exclusively by Local 508-represented employees, and that work such as strapping and wrapping were already within Local 508's jurisdiction. Local 508 thus contends that the attachment of the strapper and shrink wrap devices to the existing saddle-stitch binder should be the controlling factor in awarding the work to Local 508-represented employees, and not the ultimate means of shipment of the product. We note, however, that article 25.1, as set forth in full above, initially refers specifically to "[a]ny new equipment or improvements." Neither the strapper nor the shrink wrapper are new pieces of equipment; rather, both have been in existence for a long period of time and have been operated by employees represented by Mailers. Thus, there is no basis to conclude that there is new equipment and/or new processes at issue here so as to invoke article 25.1 of Local 508's collective-bargaining agreement.

Accordingly, we find that the factor of collective-bargaining agreements favors an award of the work to employees represented by Mailers.³

2. Employer preference and past practice

Since the New York Lottery officials decided to deliver the lottery publications via fourth class U.S. mail, the Employer has assigned the work in dispute to employees represented by Mailers. The Employer has expressed a preference for assigning the work in dispute to those employees based on the method of shipment utilized. Thus, the factor of Employer preference fa-

³In so finding, we do not rely on Mailers' argument that the following language in sec. 3(a) of its contract with the Employer is controlling: "any work beyond the trimmers on the Perfect Binder that involves publications or commercial work that is tied or shrink-wrapped and is mailed or distributed to newsstands . . ." Mailers notes that consistent with this language, the Board, in a prior case involving the same parties as here, *Cincinnati Mailers Union No. 17*, 265 NLRB 1052 (1982), awarded to employees represented by Mailers the work in dispute there consisting of tying and shrink wrapping publications produced on the Harris Perfect Binder. We find that the above contract provision, as well as the prior case, are not controlling here because both involve specific contract language concerning the Perfect Binder, a piece of machinery that is not involved in the instant case. In the instant case, there is no corresponding specific language covering the strapping or shrink wrapping of publications bound on the Mueller saddle-stitch binder, the machine that is involved in this dispute.

vors an award of the work to the employees represented by Mailers.

The record indicates that Mailers-represented employees have predominantly operated the strapper and the shrink wrapper involved here, although there was some testimony that Local 508-represented employees performed a limited amount of strapping and shrink wrapping. Further, we reject Local 508's argument that because employees it represents have historically exclusively manned the 10-pocket saddle-stitch Mueller binder, they should be awarded the work on the strapping and shrink wrapping devices here because those devices are physically attached to the Mueller binder. In this regard, we note that the strapper and the shrink wrapper devices are separate pieces of equipment from the Mueller binder even though they may be temporarily attached to the Mueller binder for the lottery publications. Thus, the factor of predominant past practice favors an award of the disputed work to the employees represented by Mailers.

3. Area and industry practice

There is no evidence of either area or industry practice on this record. Accordingly, we find that this factor favors neither group of employees.

4. Relative skills and efficiency of operations

The Employer contends that, in assigning the work in dispute to Mailers-represented employees, it considered the skills and knowledge they possessed of the postal regulations governing the mailing of the product. The record indicates, however, that the strapping

and shrink wrapping of the products are automatically performed by the respective machines, and that the employee who is overseeing the equipment does not need particular knowledge of postal regulations to properly perform his job of ensuring that the machines are functioning properly. Thus, we find that this factor favors neither group of employees.

Conclusion

After considering all the relevant factors, we conclude that the employees represented by Mailers are entitled to perform the work in dispute. We reach this conclusion relying on the factors of Employer preference, predominant past practice, and collective-bargaining agreements. In making this determination, we are awarding the work to employees represented by Mailers, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of S. Rosenthal & Company, Inc., represented by Cincinnati Mailers' Union No. 1717, affiliated with International Brotherhood of Teamsters, AFL-CIO are entitled to perform the work beyond the saddle binder at the Employer's Cincinnati, Ohio bindery plant, involving shrink wrapping and strapping of publications for the New York Lottery which are mailed to the customer.